

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PETER MICHAEL ARENA,

Plaintiff,

v.

CERVANTES, *et al.*,

Defendants.

Case No. 1:21-cv-00928-JLT-BAM (PC)

**ORDER DENYING PLAINTIFF’S MOTION
TO AWARD DAMAGES TO PLAINTIFF
AND REQUEST FOR SETTLEMENT
CONFERENCE**

(ECF No. 40)

Plaintiff Peter Michael Arena (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendants Cervantes, Berlanga, Cerda-Jirano, Moreno, and Ceja for excessive force in violation of the Eighth Amendment.

Currently before the Court is Plaintiff’s motion seeking an award of damages or, in the alternative, request for a settlement conference, filed September 23, 2022. (ECF No. 40.) In his motion, Plaintiff claims that on August 28, 2022, he was attacked in retaliation for exercising his constitutional rights to litigate. After he was beaten, Plaintiff alleges that all his belongings were illegally seized, including his legal documents and evidence concerning this suit and a previous one. Plaintiff contends that by doing this, CDCR has impeded his right to litigate and has stolen written declarations of witnesses, both staff and prisoner, that he would need to prove his case in a trial. Plaintiff believes that the Court should therefore rule in his favor and award him damages

1 for injuries suffered. Plaintiff claims that he cannot litigate without his legal property, which
2 contains all his legal documents, legal books, legal forms, evidence, case notes, dates, and all
3 written information. Plaintiff requests that the Court rule in his favor and award damages, or
4 arrange for another settlement conference. Plaintiff further states that he is now being denied
5 access to the law library, so he cannot make copies or utilize legal books and materials. (*Id.*)

6 Although Defendants have not had an opportunity to file a response, the Court finds a
7 response unnecessary. The motion is deemed submitted. Local Rule 230(l).

8 It is not clear from Plaintiff's motion whether he is seeking an award of damages for
9 injuries he may have sustained on August 28, 2022, or for injuries he alleges are the basis for this
10 lawsuit. If Plaintiff is seeking damages for injuries he may have sustained on August 28, 2022,
11 this action is not the appropriate forum for such a request. If Plaintiff believes he has suffered an
12 injury that violated his constitutional rights, he should follow the appropriate process to obtain a
13 remedy, which may include filing administrative grievances or filing a separate civil action.

14 To the extent Plaintiff is request judgment in his favor and an award of damages for the
15 claims raised in this lawsuit against Defendants, this request is denied. It does not appear that
16 these recent allegations, which occurred at California State Prison – Sacramento, have any
17 connection to the events alleged in this action, which occurred at California State Prison –
18 Corcoran. Plaintiff is not entitled to judgment in his favor by merely alleging that some
19 wrongdoing has occurred that may impede his litigation efforts. Although Plaintiff has listed
20 types of documents that were apparently seized by prison staff, he states merely in a conclusory
21 fashion that the loss of such documents has taken away his rights to properly litigate this suit, and
22 that he cannot litigate without them. At this time, there are no motions pending and discovery
23 remains open. Plaintiff has not identified how he will be prejudiced by the alleged loss of his
24 legal property, or how he is unable to continue litigating this action. If in the future Plaintiff is
25 unable to meet discovery obligations or to oppose or file a specific motion, due to the loss of his
26 legal materials, he may file a motion with the Court seeking appropriate and specific relief.

27 Finally, without a clear indication from all parties to the action that they are willing to
28 discuss settlement, the Court does not find that it would be an efficient use of judicial resources to

1 set this case for a settlement conference at this time. The parties are reminded that they are free
2 to settle this matter at any time, without judicial involvement, by communicating among
3 themselves. If in the future the parties jointly decide that this action would benefit from a Court-
4 facilitated settlement conference, they may so inform the Court.

5 Accordingly, Plaintiff's motion to award damages and request for settlement conference,
6 (ECF No. 40), is HEREBY DENIED, without prejudice.

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8 IT IS SO ORDERED.

9 Dated: September 27, 2022

/s/ Barbara A. McAuliffe
10 UNITED STATES MAGISTRATE JUDGE
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